

**THIRD AMENDMENT TO
THE CITY OF ALEXANDRIA
SUPPLEMENTAL RETIREMENT PLAN**

Pursuant to the powers of amendment reserved under Section 14.1 of The City of Alexandria Supplemental Retirement Plan, as amended and restated effective as of January 1, 1999 (the "Plan"), said Plan shall be and the same is hereby amended by the City of Alexandria, Virginia (the "City"), effective as of the dates specified herein, as follows:

FIRST CHANGE

Effective as of January 1, 2004, the definition of "Employee" in Section 1.1(p) of the Plan is deleted in its entirety and the following is substituted in lieu thereof:

"(p) An "**Employee**" means

- (1) A member of the City Council.
- (2) The Chief of the Fire Department.
- (3) A regular Full-Time or Part-Time Employee of the City who is classified as a deputy sheriff, emergency medical technician or fire marshal.
- (4) Any other individual who is treated by the City as a regular Full-Time or Part-Time Employee of the City for payroll purposes other than (i) a police officer or firefighter covered by another pension plan to which the City makes contributions, or (ii) any employee of the City school system (individuals referenced in (1), (2), (3) and (4) are collectively referred to as a "**City Employee**").
- (5) Any individual employed by the Commonwealth of Virginia Department of Health, Division of Community Health Services who works for the Alexandria Health

Department on a full-time basis (a **"Health Department Employee"**).

For this purpose, a "Full-Time Employee" means the Chief of the Fire Department, any member of the City Council and any other City Employee who is classified and treated by the City as a regular full-time employee. The term "Full-Time Employee" also includes any Health Department Employee who is treated by the City as a regular full-time employee for purposes of this Plan. A "Part-Time Employee" means any City Employee who is classified and treated by the City as a part-time employee and who is scheduled to work at least twenty (20) hours per week. The term "Part-Time Employee" does not include any Health Department Employee.

For purposes of the Plan, a member of the City Council is deemed to be in the employment of the City during the period such individual is serving as a member of the City Council.

Seasonal employees and employees who are not classified and treated by the City or the Commonwealth of Virginia, Department of Health as regular employees are not considered "Employees" for purposes of the Plan and are not eligible to participate in the Plan.

For purposes of the Plan, any "leased employee," other than an excludable leased employee, shall be treated as an employee of the City; provided, however, that no "leased employee" shall become an Employee or shall accrue a benefit hereunder based on service as a "leased employee".

A "leased employee" means any person who performs services for the City (the "recipient") (other than an employee of the recipient) pursuant to an agreement between the recipient and any other person (the "leasing organization") on a substantially full-time basis for a period of at least one (1) year, provided that such services are performed under the primary direction or control of the recipient. An "excludable leased employee" means any leased employee of the recipient who is covered by a money purchase pension plan maintained by the leasing organization which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of compensation, (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in

each plan year during the four-year period ending with the plan year is less than \$1,000); provided, however, that leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.

Notwithstanding anything to the contrary, the term Employee shall not include any individual classified by the City as working or providing services in a capacity other than as an Employee (including, without limitation, a person classified as an independent contractor or any person performing services for the City under a contract between the City and a leasing or other third party organization), notwithstanding the later reclassification, by a court or any governmental agency, of the person as a common law employee of the City."

SECOND CHANGE

Effective as of January 1, 2005, the definition of "Normal Retirement Date" in Section 1.1(z) of the Plan is hereby deleted, and the following is substituted in lieu thereof:

- "(z) A Participant's **"Normal Retirement Date"** means,
- (1) with respect to the Chief of the Fire Department or a Full-Time Employee who is classified by the City as a deputy sheriff, emergency medical technician, or fire marshal:
 - (i) for purposes of benefit eligibility, the earlier of the date such Participant (A) attains age 65, or (B) attains age 50 with 25 years of Service as the Chief of the Fire Department or as a deputy sheriff, emergency medical technician, or fire marshal, and
 - (ii) for all other purposes, the first day of the month coinciding with or immediately following such date.
 - (2) with respect to all other Full-Time Employees:

- (i) for purposes of benefit eligibility, the earlier of (A) the date the Participant attains age 65, or (B) the date the Participant attains age 50 with 30 years of Service, and
 - (ii) for all other purposes, the first day of the month coinciding with or immediately following such date.
- (3) with respect to Part-Time Employees:
 - (i) for purposes of benefit eligibility, the later of (A) the date the Participant attains age 65, or (B) the fifth anniversary of the Participant's "participation commencement date," and
 - (ii) for all other purposes, the first day of the month coinciding with or immediately following such date."

THIRD CHANGE

Effective as of January 1, 2005, Section 4.2 of the Plan is deleted in its entirety and the following is substituted in lieu thereof:

"An eligible Participant's monthly normal retirement benefit shall be equal to the benefit determined (to the extent applicable) under paragraphs (a), (b) and (c) below.

- (a) For Credited Service completed as an Employee (other than as the Chief of the Fire Department or as a deputy sheriff, emergency medical technician or fire marshal), an eligible Participant's basic pension benefit is equal to the sum of (1) and (2) below.
 - (1) For Credited Service earned prior to January 1, 1988, the sum of (i) and (ii), increased by the percentage in (iii) below:
 - (i) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by the number of years of Credited Service

earned after July 31, 1960, but prior to August 1, 1970; plus

- (ii) 1.625 percent of the Participant's Average Earnings up to 100.00, plus 0.250 percent of the Participant's Average Earnings in excess of \$100.00, multiplied by the number of years of Credited Service earned after July 31, 1970, but prior to January 1, 1988;

increased by

- (iii) 50 percent.

plus

- (2) For all Credited Service earned after December 31, 1987, 0.80 percent of Average Earnings multiplied by such years of Credited Service.
- (b) A supplemental pension benefit shall only be payable with respect to a Participant who made Supplemental Employee Contributions to the Plan. An eligible Participant's supplemental pension benefit is equal to: (1) 1.625 percent of the Participant's Past Service Compensation up to \$100.00, plus 0.250 percent of the Participant's Past Service Compensation in excess of \$100.00, multiplied by (2) the number of years of Credited Service earned immediately prior to August 1, 1960.
 - (c) For all Credited Service earned as the Chief of the Fire Department or as a deputy sheriff, emergency medical technician or fire marshal, the sum of (i), (ii), and (iii):
 - (i) 0.6 percent of Average Earnings multiplied by the each of the first five years of Credited Service as the Chief of the Fire Department or as a deputy sheriff, emergency medical technician or fire marshal;
 - (ii) 0.9 percent of Average Earnings multiplied by each of the next ten years of Credited Service as the Chief of the Fire Department or as a deputy sheriff, emergency medical technician or fire marshal; and
 - (iii) 1.0 percent of Average Earnings multiplied by all years of Credited Service as the Chief of the Fire

Department or as deputy sheriff, emergency medical technician or fire marshal in excess of fifteen.

In no event will a reduction in a Participant's Average Earnings reduce the normal retirement benefit payable to the Participant below the amount that would have been payable to the Participant under the same form of payment had the Participant retired prior to his or her Normal Retirement Date when eligible for an early retirement benefit."

FOURTH CHANGE

Effective as of January 1, 2005, the definition of "Average Earnings" in Section 1.1(i) of the Plan is deleted in its entirety, and the following is substituted in lieu thereof:

- "(i) A Participant's "**Average Earnings**" means the average monthly Earnings of a Participant over any thirty-six (36) consecutive full calendar months of Credited Service (during the one hundred eighty (180) full calendar months preceding the Participant's Employment Severance Date) that produces the highest average. In the event a Participant's relevant period of Credited Service consists of less than thirty-six (36) consecutive full calendar months, the Participant's Average Earnings shall be determined by averaging (on a monthly basis) the Participant's Earnings during the number of full calendar months of Credited Service.

For a Participant whose Employment Severance Date occurs between January 1, 2005 and December 31, 2005, "**Average Earnings**" means the greater of (1) the amount determined under the preceding paragraph, or (2) the amount determined under the definition of Earnings and Average Earnings contained in the Plan that was in effect on December 31, 2004.

Notwithstanding the forgoing, in no event shall a Participant's Accrued Benefit be less than the Participant's Accrued Benefit on February __, 2005 [insert the date this Third Amendment is adopted by the City Council] (calculated based on the Participant's Average Earnings and Credited Service as of such date, and ignoring any Earnings or Credited Service after such date)."

FIFTH CHANGE

Effective as of January 1, 2005, the definition of "Earnings" in Section 1.1(o) of the Plan is deleted in its entirety, and the following is substituted in lieu thereof:

- "(o) The "**Earnings**" for an Employee means basic compensation from the City for services as an Employee, excluding overtime, commissions, bonuses, and other additional compensation. Earnings for a member of the City Council means the basic compensation that is paid to a member of the City Council and treated as wages under Section 3401(a) of the Code. Earnings shall include any amount contributed by the City on behalf of an Employee to a plan described in Section 457(b) of the Code or that would otherwise be included as Earnings but for the fact that it is deferred pursuant to a salary reduction agreement under a plan described in Section 125, 132(f), 414(h) or 457(b) of the Code.

Earnings with respect to any Plan Year shall in no event exceed the dollar limit specified in Code Section 401(a)(17) (as adjusted from time to time by the Secretary of the Treasury)."

SIXTH CHANGE

Effective as of January 1, 2005, the definition of "Accumulated Contributions" in Section 1.1(c) of the Plan is deleted in its entirety, and the following is substituted in lieu thereof:

- "(c) A Participant's "**Accumulated Contributions**" as of any date means the sum of the following:
- (1) the total of the Participant's Mandatory Employee Contributions, plus interest;
 - (2) the total of the Participant's Pick Up Contributions, plus interest; and
 - (3) the total of the Participant's Supplemental Employee Contributions, plus interest.

A Participant's Accumulated Contributions shall include any amount contributed by the City as a Pick-Up Contribution, notwithstanding that the amount of such Pick-Up Contribution was funded by the City and was not withheld from the Employee's compensation.

Interest on a Participant's Mandatory Employee Contributions and Pick Up Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination as follows:

- (1) For contributions made prior to July 1, 1982, at two percent.
- (2) For contributions made on or after July 1, 1982, with respect to periods prior to July 1, 1990, at five percent.
- (3) For contributions made on or after July 1, 1982, with respect to periods after June 30, 1990 and before January 1, 2005, at 120 percent of the Federal mid-term rate as in effect under Code Section 1274 for the first month of the Plan Year.
- (4) For contributions made on or after July 1, 1982, with respect to periods after December 31, 2004, at five percent.

Interest on a Participant's Supplemental Employee Contributions shall be compounded annually from the end of the Plan Year for which the contribution was made to the first day of the month coinciding with or immediately preceding the date of determination at two percent."

SEVENTH CHANGE

Effective as of January 1, 2005, the definition of "Administrator" in Section 1.1(f) of the Plan is deleted in its entirety, and the following is substituted in lieu thereof:

- "(f) The "**Administrator**" means the City Manager or the person or persons designated by the City Manager. If more than one Person is designated as the Administrator by the City

Manager, the committee thus formed shall be known as the Administrative Committee and all references in the Plan to the Administrator shall be deemed to apply to the Administrative Committee."

EIGHTH CHANGE

The following new Section 13.5 of the Plan is deleted in its entirety and the following is substituted in lieu thereof effective as of January 1, 2005:

"13.5 Claim for Benefits.

- (a) Any person claiming a benefit under the Plan (a "Claimant") shall apply for such benefit by filing a claim with the Administrator in writing on the form or forms prescribed by the Administrator. If no form or forms have been prescribed, a claim for benefits shall be made in writing to the Administrator setting forth the basis for the claim. The Claimant shall furnish the Administrator with such documents, evidence, data, authorizations, consents or information in support of such claim as the Administrator considers necessary or desirable to determine the validity of the claim. The Administrator shall respond in writing to any claim for benefits.
- (b) If the claim is denied, either in whole or in part, the written notice of denial shall state, in a manner calculated to be understood by the Claimant:
 - (1) The specific reason or reasons for denial, with specific references to the Plan provisions on which the denial is based;
 - (2) A description of any additional material or information necessary for the Claimant to perfect his or her claim, if possible, and an explanation of why such material or information is necessary; and

- (3) An explanation of the Plan's claims review procedure and the time limits applicable to such procedures.
- (c) The written notice denying or granting the Claimant's claim shall be provided to the Claimant within 90 days after the Administrator's receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension is required, written notice of the extension shall be furnished by the Administrator to the Claimant within the initial 90-day period and in no event shall such an extension exceed a period of ninety (90) days from the end of the initial 90-day period. Any extension notice shall indicate the special circumstances requiring the extension and the date on which the Administrator expects to render a decision on the claim.
- (d) Any Claimant whose claim is denied (or such Claimant's authorized representative) may, within sixty (60) days after the Claimant's receipt of notice of the denial, request a review of the denial by notice given, in writing, to the Administrator. Upon such a request for review, the claim shall be reviewed by the Administrator (or its designated representative) which may, but shall not be required to, grant the Claimant a hearing.
- (e) The Claimant shall be provided reasonable access to, and copies of, all relevant documents, records and information directly related to the claim. In connection with the review, the Claimant may have an authorized representative act on the claimant's behalf. The Claimant may submit comments, documents, records and other relevant information in writing to the Administrator.
- (f) The decision on review normally shall be made within sixty (60) days of the Administrator's receipt of the request for review. If an extension of time is required due to special circumstances, the Claimant shall be notified, in writing, by the Administrator, and the time limit for the decision on review shall be extended up to a total of one hundred and twenty (120) days. Any extension notice shall indicate the special circumstance requiring the extension and the date on

which the Administrator expect to render a decision on the appeal.

- (g) The Administrator shall notify the Claimant in writing of all benefit determinations as soon as possible, but no later than fifteen (15) days after the benefit determination is made.
- (h) The decision on review shall be in writing and shall state, in a manner calculated to be understood by the Claimant the specific reason or reasons for the decision, with specific references to the relevant Plan provisions on which the decision is based.
- (i) The Administrator has the exclusive discretionary authority to construe and to interpret Plan terms, to decide all questions of eligibility for benefits and to determine the amount of such benefits, and its decisions on such matters shall be final and conclusive. This grant of discretionary authority extends to all decisions made by the Administrator on review, which shall be final and binding with respect to all concerned parties.
- (j) A Claimant shall be entitled, either in his or her own name or in conjunction with any other interested parties, to bring such actions in law or equity or to undertake such administrative actions or to seek such relief as may be necessary or appropriate to compel the disclosure of any required information, to enforce or protect his or her rights, to recover present benefits due to the Claimant or to clarify rights to future benefits under the Plan. However, in any civil action, in law or equity, any interpretation or determination made pursuant to the discretionary authority conveyed upon the Administrator shall be upheld, unless it is shown that the interpretation or determination made by the Administrator was an abuse of discretion (or was arbitrary and capricious)."

The City of Alexandria Supplemental Retirement Plan, as amended and restated effective as of January 1, 1999, and as previously amended by a First and Second Amendment, and as amended by the foregoing changes, is hereby ratified and confirmed in all other respects.

IN WITNESS WHEREOF, the City has caused this Amendment to be executed by its City Manager on this 22nd day of February, 2005.

CITY OF ALEXANDRIA

By: _____
James K. Hartmann, City Manager